IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

Cr.Appeal *No.445 of 2000*

Date of Decision : 8.10.2007

State of H. P. …Appellant

Versus:

Jai Singh & another …Respondents

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant : Mr. Ashok Chaudahry, Addl.A.G.

For the respondents : Mr. Vinay Thakur, Advocate

Sanjay Karol, J. (oral)

It is stated at the bar by the learned Addl. Advocate General that respondent No.1 Jai Singh has expired on 2.3.2004. The appeal stands abated qua him.

By way of present appeal, the impugned judgment dated 4.4.2000 passed by the Judicial Magistrate Ist Class, Jubbal, Distt. Shimla, in Criminal Case No. 19/2 of 1999/97 titled as State v. Jai Singh & another, has been assailed whereby the accused persons stand acquitted of the charged offence u/s 379 IPC read with Section 41-42 of Indian Forest Act.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

As per the case of the prosecution, on 18.6.1997 the police party headed by SHO Shri Vijay Kumar (PW-7), Constable Karam Singh, Range Officer Shri Satpal Dhiman (PW-4), Block Officer Shri Daulat Ram (PW-6), Forest Guard Shri Des Raj and Shri Mohamd. Sultan (PW-1) all members of the raiding party, on duty found 37 logs of Kayal and 87 logs of Devdar lying outside the house of accused No.1 Jai Singh in his village Shadi, Police Station Jubbal, Distt. Shimla (H.P.). Accused Jai Singh was called to produce the permit issued by the Forest Department of the State, who in turn, produced permit Nos. 30, 31, 32 & 94 of the year 1994-95. On checking, it was found that the permits pertain to only 37 logs of Kayal trees and 26 logs of Deodar trees and the remaining 61 logs of deodar trees (6.057 cubic mtrs.) were found to be in excess. Since one of the permits produced belonging to accused No.2 Harnam Singh, therefore, he was also arrayed as an accused.

With the completion of the investigation, the challan was filed in the Court for trial and after compliance of the provisions of Section 207 Cr.PC, accused Jai Singh was charged for an offence u/s 379 IPC read with Section 41-42 of Indian Forest Act, whereas accused Harnam Singh was charged for an offence u/s 379 read with Section 34 IPC and 41-42 of Indian Forest Act. The accused persons did not plead guilty and claimed trial.

In all prosecution examined 7 witnesses and the statements of the witnesses u/s 313 Cr.PC were also recorded. Two witnesses were examined by the accused in their defence.

Upon examining the depositions of the witnesses, the Court below came to the conclusion that the accused persons were entitled for benefit of doubt for the reason that there was contradiction between the version of PW-6 & PW-7 with regard to the age of the seized timber and the accused had been able to place on record the permits issued by the Forest Department in their favour for the year 1991 from which it could be inferred that the excess quantity of wood found with Harnam Singh was covered under the said permit.

I have examined the statements of the witnesses. It has already come on record that accused No.1 Jai Singh has died. The appeal against him stands abated.

None has deposed against accused No.2 Harnam Singh. The only incriminating circumstance against accused Harnam Singh is the statement of PW-1, which also does not prove the guilt of accused for the charged offence. All that PW-1 has deposed is that he had recovered the permits issued by the Forest Department in the name of Harnam Singh. None of the witnesses have stated that the wood in question was illicitly felled from the Govt. Forest. There is no evidence to show either by way of actual demarcation of the forest land or counting of the stumps of the forest trees from where the logs may have

been extracted. Thus, it cannot be said that the accused had committed any theft or had any common intention of committing such an offence.

With regard to the age of the timber, there is discrepancy in the statements of Shri Daulat Ram (PW-6) as also SI/SHO Vijay Kumar (PW-7). Insofar as the offence u/s 41-42 of Indian Forest Act is concerned, recovery is certainly not made from accused No.2 Harnam Singh. None of the witnesses have deposed to this effect. The recovery is near the house of accused Jai Singh. In this view of the matter, it cannot be said that the accused is guilty of an offence u/s 41-42 of Indian Forest Act as essential ingredient required to constitute such an offence has not been proved against the accused. I am also in agreement with the findings returned by the Court below that all the permits, i.e. Exts. D-1, D-2, D-3, D-4, D-5, D-6 & D-7, issued by the Forest Department in the name of the family members of accused No. 1, if taken into account would show that the volume of the timber recovered from accused No.1, matches with the volume for which the said permits were issued.

The Court below has correctly appreciated the evidence on record while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed.

October 8, 2007. **(Sanjay Karol)**
(rana) **Judge.**